

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed December 23, 2008. At the time of the Final Office Action, Claims 2-15 were pending in this Application. Claims 2-15 were rejected. Claim 1 was previously cancelled without prejudice or disclaimer. Independent Claims 13-15 have been amended. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. §103

Claims 2-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,029,151 issued to Pekka Nikander ("Nikander") in view of U.S. Patent 6,486,862 issued to Jeffrey Jacobsen et al. ("Jacobsen"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on *ex post* reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Although Applicants do not agree with the Examiner's rejections of Claims 2-15, Applicants have amended the independent Claims 13-15 to further and more explicitly

distinguish from the cited references *Nikander* and *Jacobsen*. Thus, Applicants respectfully submit that *Nikander* and *Jacobsen*, either alone or in combination, do not recite each and every element of Applicants' amended claims, and thus cannot render such claims obvious.

For example, amended Claim 13 recites in part:

prior to providing the Internet-compatible communication terminal device access to the Internet via the Internet access network:

setting up a communication relationship between the Internet-compatible communication terminal device and the respective interface upon receiving an Internet-access-request from the Internet-compatible communication terminal device, the Internet-compatible communication terminal device and the respective interface for accessing the Internet access network having no pre-existing relationship; and

effecting a cash-free payment from the communication terminal device to the respective interface, the payment not being made via the Internet; and

after effecting the cash-free payment, using the communication relationship to grant the Internet-compatible communication terminal device access to the Internet via the Internet access network.

Thus, Claim 13 now clearly recites a method for establishing Internet access for a communication terminal device that does not presently have Internet access via an Internet access network. Prior to establishing Internet access for the communication terminal device, a communication relationship is set up between the communication terminal device and the Internet access network. As recited in Claim 13, there is no pre-existing relationship between the communication terminal device and the Internet access network. The claim further recites that a cash-free payment is made from the communication terminal device to the Internet access network interface, and specifies that the payment is not made via the Internet, as the communication terminal device is not yet connected to the Internet. After the cash-free payment is effected, the newly established communication relationship between the communication terminal device and the Internet access network is used to grant the communication terminal device access to the Internet via the Internet access network.

Nikander and *Jacobsen* clearly do not teach these features.

Nikander discloses a communications system to enable paying for a purchase via the Internet. According to *Nikander*, communications terminals or subscribers are connected via a wired or wireless communications network, as well as via an ISP 105 and via the Internet 116 connected to it, with a target communications terminal or with a target party (see Merchant 130, figure 6). *Nikander* discloses nothing other than different developments of cashless electronic payment methods in the framework of Internet connections that have already been established or set up.

The method of *Nikander* is only executable with connections or Internet connections that have already been established and can be seen solely from the fact that “Intercepting means 120” are arranged in the ISP 105, through which data traffic running via an established Internet connection is interrupted in order to carry out a payment process between the subscriber and a payment interface. In *Nikander*, previously established Internet data connections exist via which data packets are transmitted within the framework of previously established communication connections. This means that in *Nikander* the Internet access network is already in use by the mobile communications terminal before a payment via a commercial interface occurs, which teaches away from amended Claim 13.

The Examiner acknowledges this basic aspect of *Nikander*. For example, in the October 30, 2007 Office Action (at page 3), the Examiner notes that “*Nikander* discloses a monetary system for use with the Internet whereby the user connects to the Internet to transfer money to and from accounts (col. 5, lines 1-20).” (emphasis added).

Based on the above, *Nikander* clearly does not teach setting up a communication relationship between the user device and an Internet access network interface, or effecting a cash-free payment from user device to the Internet access network interface, prior to granting the user device access to the Internet via the Internet access network, as recited in amended Claim 13. Further, *Nikander* teaches away from “effecting a cash-free payment from the communication terminal device to the respective interface, the payment not being made via the Internet.” Still further, *Nikander* does not teach establishing Internet access for a communication terminal device via an Internet access network where there is no pre-existing relationship between the communication terminal device and the Internet access network, as recited in amended Claim 13.

Jacobsen does not provide any additional information to close the gap between *Nikander* and the subject matter of the present independent claims. The Examiner argues that:

Jacobsen teaches a method for displaying information in a mobile device comprising the Internet compatible communication terminal device is not connected to the Internet access network (card reader can be connected by wireless modem, interface, etc.-- col. 17, lines 18-22).

(Final Office Action, bottom page 2).

and

Jacobsen teaches a wireless device having a card reader whereby the card can be a PCMCIA card such as a modem including a wireless reader or data storage card (col. 16, lines 10-57 and col. 17, lines 18-22).

(Final Office Action, top page 4).

Applicants do not understand how these alleged features of *Jacobsen* are relevant to the recited features of Claim 13. Certainly, they do not teach any of the features of amended Claim 13 discussed above. For example, *Jacobsen* does not teach a method for establishing Internet access for a device, which includes setting up a communication relationship between the user device and an Internet access network interface, or effecting a cash-free payment from user device to the Internet access network interface, prior to granting the user device access to the Internet via the Internet access network. *Jacobsen* also does not make a cash-free payment from a communication terminal device to an Internet access network interface not via the Internet, in order to establish Internet access for the communication terminal device via the Internet access network.

For at least the reasons presented above, *Nikander* and *Jacobsen* do not teach, disclose or suggest each and every element of amended Claim 13. Thus, Applicants respectfully request reconsideration and allowance of amended Claim 13, as well as all claims that depend from Claim 13. In addition, for analogous reasons, Applicants respectfully request reconsideration and allowance of amended independent Claims 14 and 15.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants enclose a Request for Continued Examination and authorize the Commissioner to charge \$810.00 to Deposit Account No. 50-4871 of King & Spalding LLP. Applicants believe no additional fees are due; however, should the Commissioner deem that any additional fees are due, including any fees for any additional extensions of time, the Commissioner is hereby authorized to debit such fees from deposit account number 50-4871, reference 071308.0945.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512-457-2030.

Respectfully submitted,
KING & SPALDING LLP

Eric M. Grabski

Attorney for Applicants
Eric M Grabski
Registration No. 51,749

Date: March 23, 2009

SEND CORRESPONDENCE TO:

KING & SPALDING L.L.P.
401 Congress Ave., Suite 3200
Austin, TX 78701
CUSTOMER ACCOUNT NO. 86528
512-457-2030
512-457-2100 (fax)